

**EPA REGION 8 ACTION ON MONTANA LAKE KOOCANUSA/KOOTENAI RIVER  
SELENIUM STANDARD**

Plan for Consultation with Confederated Salish and Kootenai Tribes and Kootenai Tribe of Idaho  
June 5, 2020

Background on EPA Action Triggering Need for Tribal Consultation

Lake Koocanusa is a transboundary water body located in British Columbia (BC) and Montana that has been impacted for many decades by discharges from large coal mines in the Elk River Valley in BC. The Elk River provides about 22% of the flow into Lake Koocanusa and enters the lake just upstream of the international boundary. The Montana Department of Environmental Quality (MDEQ) has been working with BC for six years toward the goal of adopting a scientifically sound site-specific selenium water quality standard (in MT) and objective (in BC) for the transboundary lake. In addition, MDEQ plans to adopt EPA's national recommended riverine selenium criterion of 3.1 ug/L for the Kootenai River downstream of Lake Koocanusa to the Idaho border. This stretch of the Kootenai River has also been found to have mine-related impacts. Under the Clean Water Act states must submit new or revised water quality standards to the EPA for review and approval. If approved by the EPA, the standards become effective for federal Clean Water Act purposes.

Lake Koocanusa and the Kootenai River fall within the aboriginal homeland of the Ktunaxa, or Kootenai, tribes in northwest Montana, northeast Idaho and southeast British Columbia. The Confederated Salish and Kootenai Tribes (CSKT) in Montana and the Kootenai Tribe of Idaho (KTOI) assert treaty rights for fishing and hunting in Lake Koocanusa and the Kootenai watershed pursuant to their accustomed and traditional hunting and fishing grounds. Both Tribes have expressed strong concern over mining pollution in Lake Koocanusa and the Kootenai River in numerous letters to the Montana Governor, to EPA and to the Secretary of State over the past decade.

Given the demonstrated tribal interest in protecting water quality and aquatic life in the watershed, EPA's review and action on Montana's selenium standards triggers the need to offer consultation to the CSKT and KTOI. For the past two years, Region 8 has engaged in routine coordination with the two Tribes on a variety of issues related to the Kootenai watershed, holding regular bi-monthly or quarterly calls with tribal staff and managers. In 2019 MDEQ began joining some of these regular calls to update the tribal representatives on their progress with BC on the site-specific standard and to seek their input on key questions. Although the EPA does not expect to receive MDEQ's standards package until early 2021, there is a need to initiate consultation with CSKT and KTOI in summer of 2020 to ensure that the Tribal Leaders have the information they need to weigh in as MDEQ and BC approach their September 1 target date to select the selenium standard/objective.

There are some unique circumstances that make this prospective consultation somewhat unusual:

- The matter before EPA affects tribes in both Regions 8 and 10. Although Region 8 will lead the consultation process, Region 8 will confer with Region 10 in advance of the consultation and will invite Region 10 management participation in consultation discussions.
- Tribal Leadership, tribal staff and managers with whom we've been coordinating have expressed interest in having at least some of the consultation occur jointly with both Tribes.
- Because the modeling method used to derive the site-specific criteria will provide a range of possible values for the selenium standard/objective which would reflect a range of different levels of protection, the Tribes' window of opportunity to weigh in on the value to be selected will occur prior to MDEQ's submission to EPA. The state has expressed a strong desire to engage with the Tribes and understand their perspective and position prior to finalizing their decision. Accordingly, to be most effective some portion of the consultation should include a three-way conversation between the EPA, the tribes and MDEQ in advance of MDEQ's rule adoption, an approach which tribal representatives have been supportive of. This would best position the Tribes to express a formal position to the MDEQ before the Se standard/objective proceeds to adoption.

#### Proposed Approach and Schedule for Consultation

- Send letters to Tribal Chairs inviting consultation and suggesting the following approach (target letters for early-mid June)
  - An initial meeting with EPA Region 8 and Region 10 leadership and Tribal Councils (jointly with both Tribes or individually if preferred) as soon as Tribal Leaders are able to meet, possibly in late June or early July, to provide high level background and to discuss the approach for consultation. If federal and tribal COVID travel restrictions allow it, Region 8 will strive for in-person representation.
  - A joint EPA-MDEQ briefing a short time after the initial consultation for the two Tribal Councils on:
    - The process and status of development of the standard/objective and the key technical issues
    - EPA's role and decision latitude for our action on MDEQ's anticipated submittal
    - Next steps and key questions that MDEQ is seeking tribal input on as they approach their September decision point
  - EPA Region 8/10-tribal discussions (manager and staff level) as needed (possibly late July-early August) to help prepare tribal staff and councils to weigh in during late August Selenium Technical Subcommittee meeting and in formal correspondence

- with MDEQ prior to selection of standards and, if desired, during MDEQ formal public comment period in Fall 2020.
- Region 8/Region 10 management consultation with Tribal Leadership in Jan-Feb 2021 (jointly with both Tribes or individually if preferred) after EPA receives MDEQ's submittal and prior to close of EPA's 60-day action period
  - Region 8 will send letters closing out consultation in March 2021 following EPA action on Montana's submittal

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